

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
TRANSPORTATION SECURITY ADMINISTRATION**

**STATEMENT OF JUSTIN OBERMAN  
ASSISTANT DIRECTOR, TRANSPORTATION THREAT  
ASSESSMENT AND CREDENTIALING  
TRANSPORTATION SECURITY ADMINISTRATION**

**Before the**

**COMMITTEE ON HOMELAND SECURITY  
UNITED STATES HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE  
PROTECTION, AND CYBERSECURITY**

**November 1, 2005**

Good afternoon, Mr. Chairman, Congresswoman Sanchez, and Members of the Subcommittee. I am pleased to have this opportunity to testify on the subject of securing hazardous materials transported by commercial motor vehicles.

Even before passage of the Aviation and Transportation Security Act, P.L. 107-71, which created the Transportation Security Administration (TSA), Congress recognized the need to bolster the security of hazardous materials (hazmat) transportation. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, P.L. 107-56, which became law on October 26, 2001, required a background records check for all U.S. drivers who transport hazardous materials in commerce.

Today, I would like to give you an overview of the Hazardous Materials (Hazmat) Threat Assessment Program, developed to implement Section 1012 of the USA PATRIOT Act.<sup>1</sup> I will also discuss how we are refocusing TSA's priorities to reflect our understanding of the nature of potential threats to the transportation system, and how that effort will inform our future actions as we continue to protect the security of transportation on our Nation's highways.

**Adapting to a Changing Threat Environment**

As TSA has recently testified before this Subcommittee, our fundamental challenge is to protect passengers, freight, and our transportation network in a constantly changing threat environment. We know that terrorists will not only look for weaknesses in our transportation system and its security measures, but they will also adapt to perceived

---

<sup>1</sup> The statute provides that a "State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary has first determined ... that the individual does not pose a security risk warranting denial of the license." See 49 U.S.C. §5103a.

security measures. Therefore, in all of its endeavors TSA is pursuing a strategy based on the following four operating principles:

**First, we will use risk and value analysis to make investment and operational decisions.** That means that we will assess risks based not only on threat and vulnerability, but on the potential consequences of a particular threat to people, transportation assets, and the economy. Further, we will assess and undertake risk management and risk mitigation measures based on their effect on total transportation network risk.

**Second, we will avoid giving terrorists or potential terrorists an advantage based on our predictability.** TSA will deploy resources and establish protocols flexibly based on risk, so that terrorists cannot use the predictability of security measures to their advantage in planning or carrying out a threat.

**Third, we will continue to intervene early based on intelligence, and focus our security measures on the terrorist, as well as the means for carrying out the threat.** We recognize that enhancing and expanding techniques to identify suspicious persons at the transit, train, or bus station, in the airport, or on our highways is necessary. However, the strongest defense posture is to detect a terrorist well before an attempt to launch an attack has begun. A coordinated interagency intelligence collection and analysis effort must be our first line of defense. Our hazmat driver screening program is an important example of this approach.

**And, finally, we will build and take advantage of security networks.** As you may know, we are placing a renewed emphasis on building information sharing networks in every transportation sector – rail, transit, maritime, and trucking, as well as aviation. Not only will we work more closely with stakeholders in these industries, we will put a renewed emphasis on sharing intelligence, capacity and technology with other law enforcement, intelligence gathering and security agencies at every level of government. We will build a more robust, distributed network of security systems to protect America.

As we apply these operational principles, TSA remains dedicated to important customer service principles, as well. As we move forward,

- TSA will identify opportunities and engage the private sector in its work to develop and implement security systems and products.
- We will protect the privacy of Americans by minimizing the amount of personal data we acquire, store and share, and we will vigorously protect any data that is collected, stored or transmitted.
- And we will remember, in all that we do, that our goal in stopping terrorism is to protect the freedoms of the American people. Therefore, we will work to make travel easier for the law-abiding public, while protecting the security of the transportation network and the people who depend upon it.

## **The Hazardous Materials (Hazmat) Threat Assessment Program**

In May 2003, TSA, the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA)<sup>2</sup> published an interim final rule implementing the hazmat driver threat assessment program.<sup>3</sup> The rule complements existing Department of Transportation (DOT) regulations that define the hazardous materials for which a hazardous materials endorsement (HME) is required to be issued by individual States or Territories. Under the threat assessment rule, any person who is required by the DOT rule to possess an HME as a condition of transporting hazardous materials must first undergo a threat assessment.

As a first step toward meeting this requirement, TSA conducted a terrorist-focused name check on approximately 2.7 million drivers then holding HMEs for their commercial drivers licenses (CDL). This name-based check resulted in the referral of 74 individuals to law enforcement agencies, some as a result of links to on-going Federal Bureau of Investigation (FBI) cases and some to terrorism. In January 2005, TSA began conducting a fingerprint-based FBI criminal history records check, an intelligence-related check, and verification of immigration status for applicants seeking to obtain a new HME on their State-issued commercial drivers license. Finally, in May 2005, TSA extended these checks to all hazmat drivers, including those seeking to renew or transfer an HME.

### *Program Basics*

TSA conducts a threat assessment to determine whether an individual may be issued an HME under the statute and implementing regulations. Regulations prohibit issuance of HMEs to individuals who: have been convicted of certain felonies, under particular circumstances; are fugitives; are not U.S. citizens, lawful permanent residents, or lawful non-immigrants, refugees, or asylees with valid evidence of unrestricted employment authorization; have been adjudicated as mentally incompetent or involuntarily committed to a mental institution; or who are determined to pose a threat of terrorism or a threat to national transportation security.

Commercial drivers seeking a new HME, or renewing or transferring an existing HME, must submit biographical and biometric (fingerprint) information to TSA for the purpose of conducting a threat assessment. This information is processed by a TSA contractor in Agent States or, in Non-Agent States, through the State department of motor vehicles (DMV) or its contractors.<sup>4</sup>

---

<sup>2</sup> PHMSA was formerly part of the Research and Special Programs Administration (RSPA).

<sup>3</sup> 68 FR 23852 (May 5, 2003).

<sup>4</sup> TSA studied several options for the fingerprint and application collection process, including a TSA-managed program, a program conducted by the States, a hybrid in which the States could opt into certain portions of the process and opt out of others, and the process we ultimately selected, in which the States may choose to conduct the fingerprint and information collection process or use TSA's agent for that purpose.

In order to effectively process a large volume of threat assessments in a timely manner and ensure that applicants who are initially denied an HME have recourse, TSA has devised a process that provides for both appeals and waivers. These cases are managed by an Appeals and Waivers Manager.

The initial adjudication process includes an assessment of each HME applicant's criminal history, citizenship status, and mental health history; each applicant is also vetted against relevant terrorism databases. Applicants with potential disqualifying issues are assessed by multiple trained adjudicators. Legal assistance is available to the adjudicators to ensure that the decisions comport with statutory and regulatory requirements. The process is designed to reduce the risk of error of improperly adjudicating applicants, while minimizing the adjudication time. The initial adjudication concludes with either: a Final Determination of No Security Threat, if the applicant is found eligible to hold the HME; or an Initial Determination of Threat Assessment, if the information indicates that the applicant has a potentially disqualifying issue. A Final Determination of No Security Threat constitutes a Federal determination that an applicant may be issued an HME by the State, although some States may conduct additional checks under their own laws.

TSA established a goal of completing the adjudication process within an average of 30 days of receiving an application, and has successfully met this goal. Since the beginning of the program, TSA processed cases, on average, within 13 days; in the most recent month for which data is available, TSA has taken an average of only 9 days to process a case.<sup>5</sup> To ensure that drivers with existing HMEs can continue to work during the adjudication process, the regulation requires States to notify drivers of the threat assessment requirement at least 60 days in advance of the expiration of their HME. When necessary, States may extend the expiration date of an existing HME for up to 90 days.

Appeals. An applicant who receives an Initial Determination of Threat Assessment may appeal that determination within 30 days of receipt. If no appeal is initiated within 30 days, TSA issues a Final Determination of Threat Assessment to the applicant and the State licensing agency, and the State may not issue or renew the HME.

An applicant who appeals his Initial Determination of Threat Assessment may review any unclassified records on which the initial determination was based, and may provide further information regarding the condition that resulted in the initial determination. This may include, for example, corrected or additional information on his or her criminal history or citizenship status. TSA notifies the applicant and the State of its determination. If the appeal is successful, the applicant will receive a Determination of No Security Threat, and may be issued an HME. If the appeal is not successful, a Final Determination of Threat Assessment is made, and the State may not issue an HME to that applicant.

---

<sup>5</sup> Since January 31, 2005, there have been over 136,000 applications (supported by fees and fingerprints, and thus ripe for adjudication) of which more than 124,000 have been cleared to hold an HME; approximately 11,000 are in the initial adjudication process; and approximately 800 in the post-adjudication process. Approximately 700 applicants have been deemed disqualified to hold an HME.

Waivers. An applicant may request a waiver if a disqualifying factor is undisputed, but that factor has been mitigated in some respect (*i.e.*, by rehabilitation after conviction of a disqualifying criminal offense). The Appeals and Waivers Manager creates a summary of the case, including information provided by the applicant, addressing the severity of the offense, recidivism, and rehabilitation. The case is then vetted by a TSA waiver committee comprised, at a minimum, of the Appeals and Waivers Manager, counsel, and representatives of the hazmat program office. The waiver committee makes a recommendation to the Assistant Secretary's designee, who renders the final decision. TSA does not grant waivers for individuals who have been convicted of treason, sedition, espionage, or crimes of terrorism. Since implementation, TSA has received over 100 waiver requests. Of the 40 waiver requests that have been completed, 19 were granted and 21 were denied.

### *Current Program Status*

TSA is proud of the progress we have made in implementing the hazmat threat assessment program. In the nine months since the Department began fingerprint-based checks, we have processed over 120,000 applications. Today, 33 States and the District of Columbia participate as Agent States through which TSA collects and transmits fingerprint and driver application information. There are 156 enrollment sites in these jurisdictions. In addition, there are 864 enrollment sites in 17 Non-TSA Agent States.

TSA has established a comprehensive program, but we continually seek opportunities for improvement. For example, to improve customer service, TSA engages daily with State DMVs, industry associations, and other stakeholders to expand the number of sites that collect fingerprint and commercial driver information. Within the next month, TSA plans to roll out a secure web portal for use by all States that provides electronic notification of threat assessment results and driver processing status. This will improve customer service at the State licensing level, as well as provide even more timely access to TSA communications.

In order to address concerns about differences among State processes and reduce opportunities for error and delay, TSA has automated the submission of biographical information to TSA from the 17 Non-Agent States. Originally, TSA anticipated that it would utilize the Commercial Drivers License Information System (CDLIS) managed by the States and the American Association of Motor Vehicle Administrators (AAMVA) to collect and electronically submit applications from the Non-Agent States. Because the AAMVA system will not be able to accommodate us in the near future, TSA has implemented two alternatives that make the process more efficient for applicants in Non-Agent States. First, we created a secure web-based application intake portal that enables States and their drivers (if the State so allows) to submit biographical information directly to TSA. Second, we enabled the electronic submission of biographical information directly from the State driver licensing systems, leveraging the prior work done with AAMVA and the States.

Like you, we have heard concerns about higher processing fees being charged in some States that are not served by TSA agents than in those served by TSA agents.<sup>6</sup> As you know, TSA has statutory authority to recover infrastructure and other start-up costs necessary to perform background checks and provide credentialing-related services through fees that are reasonably related to the costs of providing those services. Where fees are collected through Agent States, the entire amount of the fee, which covers FBI records checks (\$22), fingerprint and application collection (\$38), and program office and adjudication processing costs (\$34), is fixed by TSA at \$94.<sup>7</sup> This cost is comparable to the \$97 charged for processing a first-time passport application. In both TSA-Agent and Non-Agent States, the portion of the fee for the FBI records check and the adjudication processing is set by TSA. However, in Non-Agent States, the fingerprint and information collection fee is set by the individual State. Although the resulting fees differ somewhat, the average fee in Non-Agent states is approximately \$91.

## **Further Program Improvements**

### *Reducing Redundancy*

As we pursue improvements in the hazmat threat assessment program, we are looking at ways to leverage data collection innovations that will reduce duplication of effort among this program and other DHS vetting and credentialing programs. The Department is carefully assessing the interoperability of a variety of programs to ensure that they are complementary, while working toward the ultimate convergence of our credentialing programs.

Similarly, we are evaluating standards for comparability with other Federal agencies, such as the National Nuclear Security Administration, a component of the Department of Energy, and agencies within the Department of Defense (DoD). Our goal is to develop a protocol that permits drivers who have security clearances based on comparable disqualifying and vetting criteria to forego an additional TSA security threat assessment for an HME. TSA has convened a Comparability Work Group to assess background check requirements, with the intent of establishing a baseline “standard” for determining comparability. Among other pertinent factors that will be considered when determining comparability are any disqualifying factors which originate in legislation.

TSA also recognizes that broader efforts are underway to develop standardized screening for programs across the Federal government and the private sector. As these procedures are developed and implemented government-wide, TSA will consult with other Federal

---

<sup>6</sup> Typically, States require an HME to be renewed once every four or five years; accordingly the fee is only charged once for that period.

<sup>7</sup> As dictated by statute and OMB guidance, the agency’s fee levels are based solely on the agency’s costs of performing the security services required by the hazmat driver threat assessment rule. In order to comply with the Chief Financial Officers Act of 1990, 31 U.S.C. 3512, TSA and DHS will review all program costs no less than every two years to ensure that actual program costs are in line with fees charged. If, based on the actual cost history of the program, the fees charged are either too high or too low, the fee levels will be adjusted accordingly through rulemaking. At present, TSA’s hazmat fees do not exceed agency costs.

agencies to ensure compatibility with respect to other security screening programs whenever possible.

### *Vetting Canadian and Mexican Hazmat Drivers*

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires that Canadian and Mexican drivers who seek to transport hazardous materials in the United States be subjected to a background check similar to that required for U.S. drivers.<sup>8</sup> TSA has met with Canadian and Mexican officials to discuss options for developing and implementing a comparable vetting platform to ensure their hazmat drivers undergo security threat assessments.

Among the options we are considering is U.S. recognition of the hazmat endorsements of drivers enrolled in the U.S. Customs and Border Protection's (CBP) Free and Secure Trade (FAST) program. FAST is a cooperative effort between CBP and Canada and Mexico, an integral part of which is a fingerprint and name-based background check of participating commercial drivers. CBP conducts both criminal history record checks and intelligence vetting against relevant terrorist watch lists on all applicants, an interview, and periodic re-vetting of the FAST applicants against relevant intelligence databases. While participation in the FAST commercial driver program is currently voluntary, we have determined that the vetting process used in the program is similar to the Hazardous Material Threat Assessment Program.

### *Employer Notification of HME Denials*

We are also working toward fulfilling the requirement of SAFETEA-LU that we seek comment from the industry and develop a process for notifying employers of HME applicants of the results of the threat assessment in an appropriate manner when the applicant is disqualified. We have a notification process in place, and sought input from the industry on improving methods for notification in November 2004. We are in the process of seeking comment again to finalize a notification process that gets employers the information they need and at the same time protects the privacy rights of applicant employees.

---

<sup>8</sup> Even before enactment of this requirement, TSA promulgated regulations, 49 CFR 1572.201, prohibiting Canadian drivers from transporting explosives into the U.S. unless they have submitted to a background check by Transport Canada. In addition, TSA checks these drivers' names against watch lists to determine whether they may pose a threat to transportation security, and U.S. Customs and Border Protection (CBP) checks those names at the border to determine whether a driver transporting explosives at the border is cleared to enter the United States or should be denied entry. TSA also has engaged with Canadian officials concerning the broader population that transports all placarded hazardous materials into the U.S. and continues to work toward a background check program that will enhance bilateral security while minimizing disruption to cross-border trade.

### *Proposals for Graduated Hazmat Endorsements*

Due to concerns about the potential or perceived impact of current background check requirements and fees on the number of drivers applying for hazmat endorsements, we understand that proposals have been made to create a graduated system of hazmat endorsements. As we understand the proposal, a statutory change may be sought to require that only drivers seeking a hazmat endorsement for a smaller category of “security sensitive” hazardous materials be subject to the full complement of security, criminal fingerprint, and immigration status checks.

As noted earlier in this statement, we support a risk-based approach to hazardous materials security and agree that security regulations should be appropriately tailored to address transportation security risks. When promulgating the hazmat rule under the USA PATRIOT Act, TSA and DOT determined that all placarded materials warrant a security threat assessment of those seeking authorization to transport. A person who is given an HME today is authorized to carry the full range of hazardous materials that require a placard. These include toxic chemicals, and radioactive or poisonous commodities, as well as materials that may be perceived as relatively benign, such as nail polish, paint, and soft drink concentrate. However, in large quantities, even these “benign” commodities could be used to cause significant harm. Therefore, under both DOT and DHS rules, trucks carrying large quantities in bulk packages of these so-called “benign” commodities require placarding and a driver who has undergone a security threat assessment.

Nevertheless, we are amenable to undertaking a risk-based analysis to determine whether the existing requirements of the USA PATRIOT Act are overbroad. Any modifications to the list should be developed through the collective efforts of all stakeholders, including the Department of Homeland Security, the Department of Transportation, other interested Federal agencies, States, and industry. The analysis should also consider operational and enforcement implications of any potential changes.

### **Other Highway/Hazmat Security Initiatives**

#### *Hazmat Truck Security Pilot Program*

TSA does not intend to rely solely on the hazmat security threat assessment program to protect the Nation from hazmat-related security threats. The Hazmat Truck Security Pilot Program is intended to provide information about the specific location of hazardous materials during transport, to support coordinated, agile responses to terrorist threats. In the first phase of the pilot, TSA will evaluate a minimum of three technically different, commercially available tracking solutions. Later phases of the pilot program will involve creating and demonstrating a prototype centralized truck tracking center to provide a single point of contact for analyzing alerts or incidents and coordinating responses to potential threats.



### *Highway Watch*

The American Trucking Associations' (ATA) Highway Watch® program provides yet another layer of security for our Nation's highway transportation system. The program, implemented through a cooperative agreement between ATA and DHS through the Office of Domestic Preparedness (ODP), supports a platform for reporting safety and security threats on highways and provides anti-terrorism and safety instruction to America's highway transportation professionals. This group includes commercial truck and bus drivers, school bus drivers, first responders, public transportation professionals and others. To date more than 172,000 transportation professionals nationwide have received Highway Watch®.

A key component of the program is reporting by drivers of real or potential safety or security concerns to a national call center hotline. Safety reports are forwarded to local first responders who determine the appropriate next step. When a security call is received, a report of the incident is forwarded to the Highway Information Sharing and Analysis Center (ISAC) for assessment and analysis by a team of transportation security professionals. Incidents that may pose a threat to national security are then shared with Federal and State government intelligence officials and other law enforcement agencies. We note that with the enactment of Section 541 of the Department of Homeland Security Appropriations Act, 2006, P.L. 109-90, liability protection is now afforded to participants of Highway Watch® who report a potential incident to the appropriate authorities.

### *Working with Industry to Improve Hazmat Security*

TSA's Corporate Security Review (CSR) program has identified hazmat carriers as the first and most important sector to be visited for review within the community of some 1.2 million inter- and intrastate trucking companies. TSA is ambitiously moving ahead to conduct personal visits with the largest of these hazmat carriers to validate and improve corporate security programs and to better understand how TSA can assist in that process.

TSA is also teaming with State, local and municipal law enforcement agencies that conduct roadside inspections and safety oversight of trucking operations. Under an Agreement with TSA, DHS's Federal Law Enforcement Training Center (FLETC) is creating a curriculum to deliver security instruction to roadside officers who may come in contact with hazmat truckers. The curriculum will include identifying suspicious drivers, fraudulent documentation, suspicious cargo and reporting findings. The initial focus of the new roadside awareness program will be hazmat trucking operations.

Finally, DHS is engaged in preliminary discussions with industry representatives to identify best practices currently in existence and new measures that might increase protections for hazmat drivers. We know that today a terrorist may need nothing more than a handgun and a stoplight to hijack virtually any truck. A well-trained and vetted driver, a hijack-resistant vehicle and a response-ready enforcement community will create a highly efficient and effective barrier to terrorist use of hazardous materials in transport.

## **The Road Ahead**

The Hazmat Driver Threat Assessment Program is a vital part of our overall program for protecting the security of transportation systems. As we continue to explore, develop, and refine programs to protect the transportation of hazardous materials we will be informed by our guiding principles: risk analysis in development of programs, randomness in implementation of measures, early intervention based upon intelligence, and leveraging the power of multiple security networks.

As we move forward, I want to recognize the valuable cooperation and assistance TSA has received from the Department of Transportation, AAMVA and its State licensing partners in the development and implementation of the Hazmat Threat Assessment Program, as well as other industry partners in highway security, including motor carriers, and driver and labor organizations.

Thank you, again, for giving me this opportunity to appear before the Subcommittee. We look forward to working with the Subcommittee as we continue to implement the hazmat background check program and develop the regulations needed to implement the new mandates of the SAFETEA-LU Act. I will be pleased to answer any questions you might have.